

1 Amend 2 Cal. Code Regs. section 18740 as follows:

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3 **18740. Privileged Information: Statements of Economic Interests.**  
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5 An official or candidate need not disclose under Government Code ~~Section~~section  
6 87207(b) the name of a person who paid fees or made payments to a business entity if disclosure  
7 of the person's name would violate a legally recognized privilege under California law. Such a  
8 person's name may be withheld in accordance with the following procedure:

9 (a) An official or candidate who believes that a person's name is protected by a legally  
10 recognized privilege may decline to report the name, but shall file with his or her Statement of  
11 Economic Interests an explanation for such nondisclosure. The explanation shall separately state  
12 for each undisclosed person the legal basis for assertion of the privilege and, as specifically as  
13 possible without defeating the privilege, facts which demonstrate why the privilege is applicable.

14 (b) With respect to each undisclosed person, the official or candidate shall state that to  
15 the best of his or her knowledge he or she has not and will not make, participate in making, or in  
16 any way attempt to use ~~his~~ an official position to influence a governmental decision when to do  
17 so constituted or would constitute a violation of Government Code ~~Section~~section 87100.

18 (c) The Executive Director may request further information from the official or  
19 candidate and, if no legal or factual justification sufficient to support assertion of the privilege is  
20 shown, may order that the disclosure required by the Act be made. The official or candidate  
21 shall, within 14 days after receipt of an order from the Executive Director, either comply with  
22 the order or, if he or she wants to challenge the determination of the Executive Director appeal  
23 the determination, in writing, to the Commission.

24 (d) If the Executive Director determines that nondisclosure is justified because of the

1 existence of a privilege, the matter shall be referred to the Commission.

2 (e) The Commission shall review an appeal filed under paragraph (c) or a  
3 recommendation made by the Executive Director under paragraph (d) at a meeting held no less  
4 than 14 days after notice of the meeting is mailed to the official or candidate, the Attorney  
5 General and both the district attorney and the city attorney of the jurisdictions in which the  
6 official's or candidate's residence and principal place of business are located. The Commission  
7 shall decide whether nondisclosure is warranted by issuing an opinion under Government Code  
8 ~~Section~~section 83114 and shall treat the explanation for nondisclosure accompanying the  
9 official's or candidate's Statement of Economic Interests as an opinion request. The procedures  
10 set forth in 2 Cal. Code of Regs. ~~Sections~~ sections 18320-18324, however, shall not apply to  
11 opinions issued pursuant to this regulation.

12 (f) If the Commission orders an official or candidate to disclose, the official or candidate  
13 must comply within 14 days. The Executive Director may, for good cause, extend any of the  
14 time periods established in this regulation.

15 COMMENT: A person's name is not ordinarily protected from disclosure by the law of  
16 privilege in California. Under current law, for example, a name is protected by the  
17 attorney-client privilege only when facts concerning an attorney's representation of an  
18 anonymous client are publicly known and those facts, when coupled with disclosure of the  
19 client's identity, might expose the client to an official investigation or to civil or criminal  
20 liability. See, e.g., *Brunner v. Superior Court*, 51 Cal. 2d 616, 618 (1959); *Ex parte*  
21 *McDonough*, 170 Cal. 230 (1915); *Baird v. Koerner* 279 F.2d 623, 630 (9th Cir. 1960); and  
22 cases compiled in *re Grand Jury Proceedings*, 517 F.2d 666, 670-71 (5th Cir 1975). A patient's  
23 name has been protected by the physician-patient privilege only when disclosure of the patient's  
24 name would also reveal the nature of the treatment received by the patient because, for example,  
25 the physician is recognized as a specialist. See, e.g., *Marcus v. Superior Court*, 18 Cal.App. 3d  
26 22, 24-25 (1971) and *Ascherman v. Superior Court*, 254 Cal.App. 2d 506, 515-16 (1967). The  
27 names of business customers are not protected by the trade secret privilege unless, because of  
28 surrounding circumstances, disclosure of a particular customer's identity would also result in  
29 disclosure of special needs and requirements of the customer that are not generally known to  
30 competitors. See, e.g., *King v. Pacific Vitamin Corp.*, 256 Cal.App. 2d 841, 846-49 (1967) and

1 Peerless Oakland Laundry Co. v. Hickman, 205 Cal.App. 2d 556, 559-60 (1962).  
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3 NOTE: Authority cited: Section 83112, Government Code.  
4 Reference: Section 87207(b), Government Code.  
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